IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15-03-2002

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The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 7313 of 2002 and W.P.M.P.No. 10120 of 2002

Dr. L. Prakash,
S/o Lakshmanan,
Detenu,
Central Prison, Chennai.
.. Petitioner.

Vs.
1. State of Tamil Nadu,
represented by Secretary to
Government, Prohibition and
Excise Department,
Fort St. George, Chennai-600 009.

2. Superintendent,
Central Prison, Chennai.

.. Respondents.
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Petition under Article 226 of the Constitution of India for issuance of a Writ of Mandamus as stated therein.

Mr. R.C. Paul Kanagaraj:- For petitioner.

Mr. I. Subramaniam, Public Prosecutor:- For respondents.

: ORDER

Dr. L. Prakash, a detenu under Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982 (Tamil Nadu Act 14 of 19 82), has filed the above writ petition to issue a Writ of Mandamus directing the Superintendent, Central Prison, Chennai - 2nd respondent herein to give him all the facilities as a 'Special Class Prisoner' even when he is undergoing detention under Tamil Nadu Act 14/1982 in Central Prison, Chennai.

2. The case of the petitioner is briefly stated hereunder:- According to him, he was arrested by the Inspector of Police, R8 Vadapalani Police Station, Chennai for various offences, particularly Section 67 of the

Information Technology Act, 2000, Section 4 read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986 and Section 120-B of the Indian Penal Code. He is a Medical Doctor by profession. After securing M.B.B.S.,degree, he obtained a degree in M.S. Orthopedic. He also did other post graduate degrees and have done serious research in the lower limb and deformities in Polio patients. He has contributed more than 120 research articles which have all been published in prestigious medical journals. After the remand to judicial custody on 24-12-2001, he filed an application before the 17th Metropolitan Magistrate, Saidapet, Chennai-15 in Crl.M.P.No. 3077 of 2001 for grant of special class treatment in Central Prison. The said application was made as per Rule 815 of the Tamil Nadu Prison Manual. He assessed to income-tax for the last several years and for the last 3 years, he has paid by way of tax only more than Rs.3 lakhs under the Income-tax Act. He is also a Post Graduate in Medicine. Such persons are entitled to be classified as a special prisoner. The special prisoner according to Rule 815 of the said Manual consists of those who by their special status, education and habit of life have been accustomed to a superior mode of living. By order dated 28-12-2001 in Crl.M.P.No. 3077 of 2001, the 17th Metropolitan Magistrate, Saidapet recommended special class treatment in Central Prison for the petitioner. Pursuant to the said order, the petitioner was being given facilities as a 'special class prisoner'. While so, the Commissioner of Police, Greater Chennai has made an order of detention in 146/2002 dated 18-2-2002, directing the detention of the petitioner under Tamil Nadu Act 14/82. Thereafter, the second respondent abruptly has withdrawn the facilities given to him (petitioner). The entire action of the second respondent is unauthorised and without authority of law. Thereafter, the petitioner gave a representation through his counsel to the first respondent-Secretary to Government, Prohibition and Excise and requested to continue to give special class facility to him. There is no response from the higher authorities. Since the action of the second respondent is clearly illegal and is violative of Article 21 of the Constitution of India, having no other alternative remedy, filed the above writ petition under Article 226 of the Constitution of India.

3. Considering the issue raised in the writ petition, this Court directed notice to the Public Prosecutor. 4.Heard the learned counsel for the petitioner as well as learned Public Prosecutor for respondents.

5. The only point for consideration in this writ petition is whether the petitioner is to be given special class prisoner facilities even as a detenu under Tamil Nadu Act 14 of 1982.

6. In view of the narration of the facts in the earlier part of my order and also the question in issue, it is unnecessary to refer the reasons and other details relating to the cases filed against the petitioner. However, it is not disputed that the petitioner is an accused under Section 67 of the Information Technology Act, 2 000 read with Section 41 read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986 read with Section 27 of the Arms Act, 1959 and 120-B (ii) of

the Indian Penal Code. He filed a petition before the 17th Metropolitan Magistrate, Saidapet, Chennai seeking permission to treat him as a special class prisoner, since he is a doctor and income-tax assessee. Before the learned Magistrate, he produced Tax Chalan for the assessment year 2001-2002 and Advance Tax Chalan for the Assessment year 2002-2003 along with Permanent Account card. The learned Magistrate, after holding that since the petitioner/accused is an income-tax assessee recommended for special class treatment in Central Prison, Chennai during his custody period subject to confirmation by the Collector of Chennai as per Section 815 of The Prison Manual.

7. It is not disputed that thereafter, that is on 18-2-200 2, the Commissioner of Police, Greater Chennai, after satisfying himself that the petitioner is an immoral traffic offender as contemplated under Section 2 (g) of the Tamil Nadu Act 14/1982 and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, by virtue of power conferred on him by subsection (1) of Section 3 of Tamil Nadu Act 14 of 1982, passed an order detaining him in custody at the Central Prison, Chennai. Accordingly, as on date, particularly on the date of filing of the petition, the petitioner is a detenu under Tamil Nadu Act 14 of 82.

8. Learned Public Prosecutor by drawing my attention to the relevant provisions from Tamil Nadu Act 14 of 1982 and the Rules framed by the Government of Tamil Nadu in G.O.Ms.No. 1273, Prohibition and Excise (XII) Department, dated 13-10-1986, would contend that the petitioner being a detenu under Tamil Nadu Act 14/82, the said Rules alone are applicable to all the detenus detained under Tamil Nadu Act 14/1982 and the petitioner cannot claim all facilities as a special class prisoner. The following provisions in Tamil Nadu Act 14/1982 are relevant for our consideration:-

"Section 2. Definitions.- (a) "acting in any manner prejudicial to the maintenance of public order", means - (i) xx xx (ii)xx xx (iv) in the case of an immoral traffic offender, when he is engaged, or is making preparations for engaging, in any of his activities as an immoral traffic offender, which affect adversely, or likely to affect adversely, the maintenance of public order; Explanation.- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause (a) directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or ecological system. (g) "immoral traffic offender" means a person who commits or abets the commission of, any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Central Act 104 of 1956);

Section 5. Power to regulate places and conditions of detention.--Every person in respect of whom a detention order has been made shall be liable

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(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline, and punishment for breaches of discipline as the State Government may, by general or special order, specify; and (b) to be removed from one place of detention to another place of detention, within the State by order of the State Government."

Under Clause (a) of Section 5 referred above, the Governor of Tamil Nadu framed an order called "The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers (Conditions of Detention) Order, 1986 (in short "Conditions of Detention Order, 1986") (G.O.Ms.No. 1273, Prohibition and Excise (XII)a Department, dated 13-10-1986. Since the petitioner being an immoral traffic offender and his activities are prejudicial to the maintenance of public order, the competent authority detained him at Central Prison, Chennai. As I have already referred to, clause (a) of Section 5 of Tamil Nadu Act 14 of 1982 enables the State Government to frame Rules and the Government have also framed an order relating to conditions of detention. Undoubtedly, the petitioner being a detenu is bound by various provisions of the Conditions of Detention Order, 1986. The said order refers about accommodation, diet, clothing, bedding, toilet articles, private property, interview and communications, supply of newspapers and magazines, withdrawal of privileges, representation by detenu, offences and punishments while under detention, prohibited articles, powers of Superintendent, security, imposition of cellular or separate confinement, hand cuffing, removal of detenus to hospitals, exercise and games, visits etc. The Annexure to the order refers about food and other eatables to be given to detenus on 4 occasions. The type of food, quantity etc., are also prescribed. After going through all those details, I am satisfied that minimum comforts are provided and in the absence of any statutory provision or Government Order, the petitioner being a detenu under Tamil Nadu Act 14 of 1982, cannot be granted facilities as a special class prisoner than that of the facilities provided under the Conditions of Detention Order, 1986.

9. Learned counsel appearing for the petitioner by relying on a decision of the Supreme Court in Francis Coralie v. Union Territory of Delhi, reported in AIR 1981 Supreme Court 746, contended that petitioner is entitled to facilities as a special class prisoner. After going through the said decision and in the light of the various facilities provided under the Conditions of Detention Order, 1986, I am of the view that the said decision is not helpful to his case. He also relied on a Division Bench decision of this Court rendered in W.P.No. 8586 of 1995 dated 13-11-95 (F. Thomim v. The Superintendent, Central Prison, Madras). Herein again, the Division Bench has rejected several claims made by the petitioner therein, who was confined in Central Prison, Madras in pursuance of preventive orders clamped either under COFEPOSA and PIT N.D.P.S.Act. No doubt, in the same order the Division Bench has directed the jail authorities to provide certain facilities in accordance with the Rules applicable. There is no quarrel with regard to the application of

Conditions of Detention Order, 1986 to the petitioner. It is not the grievance of the petitioner that the facilities provided under the said Order are not being given. His request is that inasmuch as the learned Magistrate has recommended for special class treatment in Central Prison, the same may be continued even when he is undergoing detention under Tamil Nadu Act 14 of 1982. In the light of the above discussion and in view of the fact that petitioner detained under Tamil Nadu Act 14 of 1982 is an immoral traffic offender and his activities are being prejudicial to the maintenance of public order, he cannot be given facilities as a special class prisoner as claimed, though he is entitled to facilities in terms of Conditions of Detention Order, 1986. Regarding the representations said to have been made by him to the higher authorities, it is made clear that any representation is made, the same has to be disposed of then and there in accordance with the Rules/Order applicable to him.

10. In the light of what is stated above, I do not find any merit in the writ petition; consequently the same is dismissed. WPMP No. 10120 of 2002 is also dismissed. 15-03-2002 Index:- Yes Internet: Yes. R.B.
To:- 1. The Secretary to Government, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The Superintendent, Central Prison, Chennai.

P. SATHASIVAM,J

Order in W.P.No. 7313/2002 and WPMP No. 10120/2002

Dt:- 15-03-2002